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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

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To: The Commission

COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS

SMALL BUSINESS IN TELECOMMUNICATIONS

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SUMMARY

- The Commission failed to address the conflict between the licensing of paging channels and IMTS channels; presumably IMTS operators would be subject to non-symmetrical treatment as paging operators.
- The Commission's decision not to subject nation-wide paging licensees to auction is not symmetrical with its proposal for other paging systems.
- There is no apparent way to accommodate providers of BETRS service within the Commission's plan to implement geographic licensing for paging channels; to force BETRS operators to bid at auction would result in regulatory non-symmetry between the two classes of operators.
- Due to the realities of the previous licensing of the spectrum, the proposed auction is wholly impractical.
- Competitive success within the marketplace today is presently dictated by the marketplace, rather than by regulation, therefore, it is not necessary for the Commission to adopt an alternative regulatory scheme.
- The Commission provides no basis for its decision to license paging systems on an MTA-wide basis as compared to other geographic regions.

- The Commission failed to perform any reasoned analysis to determine whether auctions were an appropriate method of licensing paging frequencies, and failed to determine if its auction scheme would have an adverse impact on designated entities.
- The Commission should employ smaller geographic regions which more closely approximate the size of a local operator's system, rather than relying on larger areas, like MTAs, for geographic-based systems.
- In the event that a designated entity provides service to one-third or greater of the population base, or one-half or greater of the geographic area from existing, constructed systems, the designated entity should be awarded a dispositive preference for that wide-area license.
- If more than one designated entity were eligible for a preference for a wide-area license, only designated entities would be eligible to bid for the license.
- The Commission's rejection of entrepreneurs' blocks unreasonably hinders the participation of small business.
- The Commission should employ sufficient bidding credits in any paging auction to permit participation by small business.

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To: The Commission

COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS

Small Business in Telecommunications ("SBT") hereby makes comments to the Commission's Notice of Proposed Rule Making, WT Docket No. 96-18, PP Docket No. 93-253 (Released February 9, 1996) ("NPRM") and states the following:

Introduction

SBT is a non-profit trade association whose members include paging and two-way operators, resellers, and many other businesses whose commonality is their size. Full membership in SBT is limited to companies with annual revenues of less than \$20 million.¹ SBT was formed to provide a voice for the thousands of small telecommunications operators whose agenda was believed inadequately represented before the Commission by more traditional

¹ In fact, most of the members' revenues are less than \$3 million per year, thereby qualifying each as a designated entity for the purpose of consideration in any proposed auction of the radio spectrum as defined by earlier Commission action and the provisions of the Communications Act of 1934, as amended ("the Act"), see, 47 U.S.C. Section 309(j).

associations, due the ability of large, publicly traded corporations to overwhelm the agendas of those associations. Accordingly, SBT was organized to provide necessary support and representation to promote the competitiveness and growth of small business in the area of regulation and legislation affecting small business.

The Commission's recent efforts to employ geographic licensing and auctions as its prevailing method of licensing spectrum is causing both transitional and long-term problems for small business. When appropriate, SBT is not opposed to the use of the Commission's auction authority,² however, its members are concerned that the unbridled use of auctions and geographic licensing, without the creation of effective safeguards to prevent over-concentration of the marketplace, will injure small business. SBT, therefore, offers these comments in an effort to assist the Commission in determining whether its proposed regulations are appropriate in view of the potential harm to existing operators arising out of adoption of the Commission's proposals.

The Commission's Articulated Objectives

At paragraphs 1 and 2 of the NPRM, the Commission articulates its objectives in bringing its proposals and includes the following: (1) to encourage growth and competitiveness

² SBT respectfully suggests that the Commission should employ strict scrutiny to any proposal which seeks to auction fully occupied spectrum, which is characterized by constructed systems, serving the public, and which might result in adverse consequences for subscribers and small business serving those subscribers. Absent an intent solely to create federal revenues, which intent cannot serve as a basis for auction in accord with the plain terms of the Communications Act of 1934 (as amended), such auctions are ill considered and should be discouraged as unnecessary and impractical.

in the paging industry; (2) to fulfill its mandate to provide regulatory symmetry among Commercial Mobile Radio Service ("CMRS") providers; and (3) to provide for competitive success within the marketplace which is dictated by the marketplace, rather than regulation. These three objectives appear to be the articulated motivations for the Commission's proposals and its efforts to establish geographic licensing as the dominant method of allocating spectrum for the provision of paging services. Standing alone, each of these objectives appears to be laudable, however, the Commission's proposed methods for reaching these objectives, when considered against the backdrop of the marketplace, *i.e.*, the real world, demonstrates fully that the Commission's efforts were not well-considered and require many changes to assure market access and protection for small business. To better illustrate the difficulties which small business and the marketplace will suffer if the Commission's proposals are adopted, the following observations are provided:

Objective 1: **To encourage growth and competitiveness in the paging industry.**

In accord with the plain language of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 ("Budget Act"), Title VI & 6002(b)(2)(A), (B), 107 Stat. 312, the Commission was provided a mandate by Congress to take such steps as are "necessary and practical" for reaching regulatory symmetry among providers of CMRS services. The Commission's articulated objective suggests that the paging industry requires the adoption of the Commission's proposals to grow and become more competitive. Yet, the outline of success

under the current licensing scheme which was provided within the NPRM belies any need for Commission action to spur growth or competition within the paging marketplace. At paragraph 6 within the NPRM the Commission stated:

In the past, few years, the growth in consumer demand for paging service has accelerated markedly, and this trend is continuing. A study by Economic and Management Consultants International estimates that the paging industry grew by 29 percent in 1993. In 1994, the paging industry grew by an additional 38 percent, bringing total subscribership to more than 27.3 million. Analysts project that penetration could approach at least 15 percent of the population (or 41.5 million subscribers) by the year 2000. (footnotes omitted)

Employing any yardstick of success, the paging industry is healthy, competitive and is growing rapidly. No additional or different regulation is necessary to assist this portion of the telecommunications marketplace and the NPRM does not articulate any motivation for the Commission's proposals that is based on necessity. To the contrary, the Commission's proposals are based, in large measure, on the booming success of the paging marketplace. What is lacking in the Commission's analysis is any showing of need or practicality which requires adoption of the Commission's proposals. Since these two elements are required under the Budget Act, and the Commission has not demonstrated that either of these threshold elements is present, the Commission should not adopt its proposals as offered.

Objective 2: **To fulfill its mandate to provide regulatory symmetry as among Commercial Mobile Radio Service providers.**

Again, taken in the objective, this goal appears laudable. Yet, as stated, *infra*, this mandate does not apply where the provision of regulatory symmetry is neither necessary or practical. Accordingly, absent a showing by the Commission that adoption of its proposals is both necessary and practical, its proposed changes in regulations cannot be found to have been lofted for the purpose of meeting this stated mandate. Nor has the Commission shown that its proposals would, if adopted, provide regulatory symmetry. The manners in which such symmetry would not be provided are as follows:

Two-way operations: Although the Commission's discussion glosses over the subject of IMTS operations, the fact remains that such systems continue to operate in the marketplace and many are quite successful. These systems are constructed employing frequencies which are to be auctioned as paging channels, thereby subjecting existing IMTS operators to regulatory treatment equal to paging operators. Paging operators and IMTS operators are both CMRS providers, but it is apparent that the Commission's proposals will not provide regulatory symmetry between these classes. Instead, IMTS operators will be made to compete for further use of the spectrum in auctions which pit the differing financial considerations of wide-area paging operators against IMTS operators' primarily local service offerings. The proposals will force IMTS operators to provide wide-area systems in an uneconomical manner to meet construction requirements or will require IMTS operators to convert successful two-way systems to paging. Since most IMTS operators are also small businesses, the Commission's proposals would affect unequally against the operators of small business, as compared to larger paging companies. Nor has the Commission demonstrated how a paging company and an IMTS system

can be considered "substantially similar" services for the purpose of employing the language within the 1993 Budget Act.

Nationwide Systems: The NPRM proposes to exclude nationwide licensees from application of the Commission's new regulatory regime for two reasons (1) these systems are already geographically licensed and (2) the Commission has tentatively found that its construction requirements for such systems will suffice to assure that the public interest, allegedly in the creation of nationwide systems, will be served by exemption for these systems. Although SBT does not propose any licensing scheme which would subject these licensees to auction, it must be noted that the Commission's proposal for nationwide systems is not symmetrical with its proposal for other paging systems. If some advantage, via exemption, is appropriate for one type of operator which has demonstrated compliance with the Commission's construction requirements, then that same advantage must be offered to all CMRS operators who have served the public interest by constructing in accord with their authorizations. SBT submits that a review of the Commission's records would quickly show that many paging systems serve a substantial portion of given MTAs, including a majority of the population base, through the construction of systems in accord with existing authorizations, or otherwise provide substantial service to the area. In fact, it is highly likely that the proportionate amount of an MTA served by existing, local operators, is greater than the proportion of the nation served by facilities constructed by nationwide licensees. Accordingly, to provide regulatory symmetry among CMRS operators, the Commission's proposals must contain exemptions for local operators who have also served the public interest by constructing local systems to serve a substantial portion

of MTAs or to provide substantial service to a geographic area. Their contribution is no less than a nationwide licensee and SBT respectfully suggests that such contributions should be fully recognized by exemptions.

BETRS: Although the NPRM notes the problem in attempting to accommodate BETRS systems and the remainder of the proposals contained within the NPRM, no solution is offered. BETRS systems are a vital portion of the Commission's efforts to provide universal telephone service to even the most remote portions of the Nation. In addition, use of spectrum for provision of BETRS service is often employed by rural telephone companies, one of the entities identified within the Act to be considered in any use of auction authority. SBT can conceive of no practical manner for accommodating providers of BETRS services concurrently with MTA licensees to provide wide-area paging services.³ If the Commission were to auction spectrum dedicated for paging use, the Commission would ignore BETRS as an essential method of providing service to rural telephone subscribers. The Commission cannot expect that a rural telephone service provider would be willing to bid at auction to gain spectrum over a wide-area, including the urban areas, for future BETRS needs. As the Commission is fully aware, the revenues derived by operation of BETRS systems are quite small and would not justify a rural telephone company's participation at auction. Although the Commission has stated that it

³ Given the nature of BETRS service, SBT cannot find any possibility for relief arising out of the Commission's partitioning proposals to provide relief to rural telephone service. BETRS is, by nature, a site specific service which does not lend itself to a geographic approach, even employing partitioning. Paging, however, if provided to subscribers on the basis of reliable wide area coverage, must be able to rely on such coverage, without respect to any certain location.

believes that PCS services will someday provide rural telephone services, SBT respectfully points out that many rural areas are still not served by cellular service, despite its introduction to the marketplace over ten years ago. It is, therefore, illogical to assume that PCS services, which require a greater construction and capitalization effort than cellular, will soon fill this potential service vacuum.

The Commission's use of an auction to sell the spectrum needed to provide BETRS service to paging companies would be unauthorized, in accord with its auction authority under the Act, as it would create a direct detriment to rural telephone companies, a protected class of designated entities. No other legal conclusion is reasonable. For this reason alone, the Commission should recognize that such auctions would be inappropriate for meeting the plain language of the Act and the agency should remove the threat to rural telephone companies created by its proposals within this Docket arising out of the Commission's attempt to provide the impossible, namely, equal regulatory treatment as between types of CMRS service which are in no way "substantially similar."

PCP Operations: Like it or not, the Commission has traditionally created two classes of paging operators, those which have exclusive use of a frequency in a given area ("CCP") and those which do not ("PCP"). This fact, standing alone, must now be viewed as an impasse to the Commission's proposals. On the one hand, the Commission has proposed to create regulations which would be equal among CCP and PCP operators, finding that the services provided are substantially similar. On the other hand, its traditional licensing methods and the

creation of these dissimilar classes of operators stands in the way. The language within the NPRM fully recognizes the wide regulatory differences which arise out of operation on shared, versus exclusive frequencies.

A review of the Commission's data base to determine the number of licensees on any of the subject PCP channels in a given market will invariably show at least two licensees per market and often will show up to a dozen in urban areas. Given this fact, it is difficult to discern any value either to a wide-area licensee or to an incumbent operator which might be gained via auction. The geographic-based licensee would be provided authority for an area shot with holes created by existing systems, most likely in the most heavily populated areas. Meanwhile, incumbent operators which are unsuccessful at auction would be precluded from further growth of their systems. Neither operator would be satisfied with the outcome and there exists little likelihood that the U.S. Treasury would net much benefit except from the actions of only the most speculative of entities. SBT, therefore, suggests that the proposed auction of PCP spectrum is wholly impractical.

Since PCP operators are traditionally small business, the disparate effect of imposing auction assigned, geographic-based licensing on this class of operators to select among mutually exclusive applications (where such mutual exclusivity does not presently exist) would not be appropriate. SBT is fully aware of the problems which have existed in sharing spectrum and the difficulties the agency has had in resolving interference complaints, and would welcome the Commission's revisiting of these problems in a separate rule making for that specific purpose.

However, attempting to resolve those problems within this proceeding is too far a stretch. One cannot adequately address concerns regarding interference between sharing operators and deal with the issue of auctions and geographic-based licensing simultaneously. One set of issues arises out of sharing of channels. The other arises out of an attempt to create some level of exclusivity. The variables created as between the two sets of proposals are too numerous and require too many assumptions to provide adequate treatment.

Future Licensing of Shared Channels

Small Business in Telecommunications does not believe that the Commission will amend its rules at this time for licensing of shared channels. In an abundance of caution, however, SBT states the following regarding setting forth equitable sharing rules (presuming that the Commission correctly determines that PCP channels are inappropriate for auction and geographic licensing). If the Commission is determined to attempt, at a more appropriate time, to reconcile the differences between the regulation of CCP channels and PCP channels, the Commission must first provide some reasonable basis for allowing PCP licensees to earn exclusive use of channels via construction, loading and operation. SBT recommends that an applicant be put to the burden of demonstrating that coordination of its proposed system would be in the public interest, including a demonstration that there is a lack of service being provided by co-channel operations in the given area, employing criteria which would examine the number of existing facilities in the proposed area of operations. Creation of this obligation would preclude the filing of "strike" applications which impose sharing of a channel upon operators whose systems should otherwise be protected. Rules which promote this reasonable licensing of systems would eventually create

a PCP marketplace that is dominated by local carriers who might then be in a position to earn exclusive use of channels in their area, either individually or through voluntary negotiations with other carriers.

Yet, returning to the proposals within the NPRM, it is apparent that the traditional methods of licensing imposed by the Commission for CCP and PCP have created great differences which cannot be reconciled by auction or geographic licensing. In sum, the objective stated by the Commission arising out of its desire to create greater regulatory parity among these classes of CMRS providers cannot be met through its proposals. Therefore, the Commission should decline to adopt its overly bold proposal to create such parity as simply not possible at this time.

Objective 3: **To provide for competitive success within the marketplace which is dictated by the marketplace, rather than regulation.**

Unless the Commission is silently including the auction marketplace within its definition of "the marketplace," SBT respectfully suggests that the Commission's articulated objective is inapposite with its proposals. Presently, the user marketplace controls where a paging company will provide service, based on where demand and channels are available. That marketplace determines whether an operator will construct a local system, a regional system, or a nationwide system. No set of regulations presently demands that the operator construct over a large area, particularly when such construction would be illogical based on levels of demand or the

operator's available resources. Growth of systems is dependent on the skill and strategy and resources of each operator's business. No regulation states that an operator is precluded from extending its reach to serve new markets. Today, the marketplace dominates the paging industry, leading to low-cost, efficient operations in every city in America that is being met with greater consumer demand and acceptance for the service. There can be no doubt (and the statistics cited by the Commission within the NPRM fully demonstrate) that the paging market is competitive, serving the public, and is driven fully by marketplace forces.

The Commission's proposals seek to redefine the market through regulation, stating, in effect, that all paging systems should be built out across entire Metropolitan Trading Areas ("MTAs"), yet the Commission cites no basis for its claim as it might apply to the paging market. Despite its findings, an objective reader of the NPRM must question, why MTAs? MTAs were not created by Rand McNally™ based on service by paging systems, paging system construction, or paging markets.⁴ Nothing stated by the Commission provides any reasoned basis for its assumption that MTAs reflect the paging market. Nor can the Commission show how limiting the growth of systems to MTA borders is beneficial or reflective of the present, free, organic marketplace. For example, a practical paging system might extend between Phoenix and Las Vegas. Yet, this would cross MTA borders, requiring a company wishing to construct such a system to bid not only for the Phoenix MTA but the Los Angeles MTA, even

⁴ At paragraph 34 of the NPRM, the Commission states that MTAs "best mirror the size and development of existing paging systems." Absent some basis for this statement other than the Commission's best guess, this unsupported claim cannot be a reasonable basis for rule making.

if that same operator had no desire to compete in the provision of paging service within Los Angeles. Therefore, one cannot assume that the use of MTAs has any rational basis for determining the proper licensing, construction or operation of a paging system. One can only presume that the Commission is attempting to employ regulation to frustrate the dynamics of the rapidly growing marketplace. This proposal is, therefore, entirely contrary to the Commission's stated objective above.

SBT further notes that the Commission's proposals would require a diverting of resources from construction and operation of paging systems to auction payments. Certainly the payment of auction prices cannot be found to be an allowance of the marketplace to dictate the terms of competition. Competition for future growth would not be determined by success in the marketplace or willingness to devote resources to provision of services to the public. Instead, those marketplace forces are to be ignored in a race to fill the coffers of the U.S. Treasury. There exists no nexus between the ability to compete effectively in the marketplace and the ability to raise capital for participation in auctions created by greater regulation, and the Commission rightfully does not claim that this nexus exists. Accordingly, the Commission's stated desire to auction paging spectrum does not equal its articulated objective and, absent necessary reconciliation of the agency's articulated objective and its proposals, the agency cannot be found to have engaged in reasoned decision making if its proposals are adopted.

Alternative Objectives:

The Commission could revise its stated objectives to include the following, which appear to more closely describe the Commission's intentions: (1) to provide for simplified licensing administration by concentrating spectrum use within the hands of a few, large operators; and (2) to raise additional revenues for the U.S. Treasury.

SBT contends that these two objectives might be met fully by the Commission's proposals, however, it is doubtful whether these objectives would withstand judicial scrutiny as a proper basis for adoption of the Commission's proposals. Suggested objective number one, above, would be a rejection of the Commission's obligation to assure opportunity for small business, minorities and rural telephone companies in the Commission's auction procedures. Suggested objective number two above was specifically rejected as a lawful basis for employment of auction authority by the Act, itself. Accordingly, although these two objectives are the only ones which might be met by the Commission's proposals, neither would be a proper basis for adoption of the Commission's proposals.

Designated Entities

SBT respectfully disagrees with the Commission's aggregation of those portions of the Act which are intended to protect designated entities as their interests relate to the use and application of the Commission's auction authority. At paragraph 114 of the NPRM, the Commission combined two sections of the Act, Sections 309(j)(3)(B) and 309 (j)(4)(A), to arrive at the conclusion that auctions are always appropriate, so long as the Commission provides only

some alternative payment plan for designated entities. SBT strongly disagrees with this interpretation.

A plain reading of the Act requires that the Commission first determine whether use of auctions is appropriate, including an analysis of any adverse impact on designated entities. Then, if deemed appropriate by means of reasoned decision making, the Commission must provide alternative payment plans to assure participation by designated entities. The mere existence of alternative payment plans does not create a presumption that the use of auctions is appropriate for small business, women- and minority-owned businesses, or rural telephone companies. Such presumptions are "bootstrapping" and must be rejected by the Commission.

Following its experience gained through the 900 MHz auctions, the fallacy of this type of argument is clear. Although the Commission found that use of alternative payment plans was appropriate, the Commission rejected the notion that use of auctions itself might be inappropriate regardless of the relief to be provided to designated entities through alternative payment plans. The results of the 900 MHz auction undoubtedly will demonstrate wide-spread over-concentration of spectrum in the hands of a small number of large entities. Designated entities which are incumbent users of the auctioned spectrum will have been forced to pay exorbitant sums to remain in the auction, despite the existence of alternative payment plans. This circumstance is particularly vexing when one further notes that large entities will have paid, on average, less per pop for spectrum on which they were also the incumbent.

SBT respectfully suggests that use of auctions is naturally inconsistent with the promotion of the competitiveness of small business. The Commission's past and present attempts to reconcile this fact with its desire to hold auctions has, thus far, been unsuccessful. The agency has not yet devised a method to fully include designated entities in the auction procedure in a way in which the designated entities are not overwhelmed by the considerable resources of large, publicly traded corporations. To assist the Commission in reconciling this problem, notwithstanding SBT's objection to the use of auctions for licensing of paging frequencies for those reasons stated herein, the following plan is offered as a method to finally include designated entities in the Commission's future use of auctions:

- (1) The Commission should employ smaller geographic regions which more closely approximate the size of a local operator's system, rather than relying on larger areas, like MTAs, for geographic-based systems. If any geographic licenses are to be created, SBT recommends that the Commission employ Basic Trading Areas ("BTAs") or Basic Economic Areas ("BEAs").

- (2) In the event that a designated entity provides service to one-third or greater of the population base, or one-half or greater of the geographic area from existing, constructed systems, the designated entity should be awarded a dispositive preference for the wide-area license for that region. The fact of the entity's provision of existing, substantial service would demonstrate that the entity would not be unjustly enriched by the grant of a preference. Preferred designated entities would be those persons whose average annual income was less than \$3 million.

- (3) In the event that more than one designated entity would be eligible for a preference in accord with (2) above, only those preferred, designated entities would be eligible to participate in an auction of the subject frequency within the geographic area.

Only by taking tangible steps to create regulation which recognizes the natural effect of competition at auction among operators with widely different resources may the Commission

provide reasonable inclusion in its auction processes to designated entities.⁵ To do otherwise would be to reject the Commission's obligation to provide reasonable, realistic spectrum access opportunities via auction to small, women-owned and minority-owned businesses.⁶

SBT respectfully notes that these suggested methods of providing access to designated entities do not replace the Commission's threshold obligation, in accord with 47 U.S.C. §309(j)(3)(B), to engage in reasoned decision making to determine whether the use of auctions is, in the first instance, appropriate. However, in those cases where auctions are appropriate, use of this method of necessary inclusion for small business is required to meet the Commission's mandate in accord with 47 U.S.C. §309(j)(4)(A).

⁵ The Commission could, of course, provide much higher bidding credits, such as 60%, which might also provide the necessary entre to small business, but use of higher bidding credits would still force small business to devote resources to auction which would better be used for construction of systems and for the provision of competitive services to the public.

⁶ The Commission's request for comments regarding discrimination in the paging industry is, respectfully, silly. Although the Commission is fully aware that the level of participation in the ownership of telecommunications services by women and minorities has been historically low, the chance that any commenting party will have the opportunity to provide a comprehensive study of the past or present circumstances which might provide a reasoned basis for gender-based or race-based incentives for such affected parties, is so slim as to be impossible. Given the Commission's observation of the strict scrutiny test put forth by the decision in Adarand, it is apparent that the Commission intends to short-cut any such problem by lumping women, minorities and small business into a single group, regardless of whether such action is fully justified. Therefore, SBT hereby sends the Commission to its own records and recollections to determine whether the paging industry represents a proportion of women and minority owned businesses that is reflective of the total population. The answer is obviously that it does not. However, SBT notes that the burden for determining whether such incentives are required is upon the Commission in meeting its mandate under Section 309(j) of the Act, not on commenting parties.

Finally, SBT notes the Commission's rejection of entrepreneurs' blocks because of the comparatively lower capitalization costs of paging systems. This analysis is patently unreasonable as a basis for rejection of entrepreneurs blocks. If capital costs are lower, then small business will have some realistic opportunity to meet construction requirements and might be able to provide competitive, wide-area service to the public following auction. Accordingly, notwithstanding the suggested methods outlined above, the use of entrepreneur blocks, in lieu of unfettered competition between large and small operators at auction, is entirely appropriate. It would be unreasonable for the Commission to recognize the potential ability of small business to construct these paging systems, only to penalize small business by forcing a more brutal auction experience on those entities.⁷

Bidding Credits

Thus far, the Commission's limited experience with bidding credits has been less than encouraging. The proposed 10 and 15 percent bidding credits proposed in the NPRM provide no hope that bidding credits will ever be an effective means of encouraging designated entities to participate in auctions. To emphasize this point, the following is noted: For bidding credits to be effective, the amount of the credit must be equal to the percentage difference between the resources to be employed among bidders with extremely different financial conditions. For

⁷ The Commission's proposal to reject the use of entrepreneur blocks fails to provide insurance which a typical small business can *really use*. Such blocks were, instead, provided for operation of 30 MHz wide PCS blocks, which most small business would not even attempt to construct. SBT respectfully submits that the Commission's NPRM has turned logic on its head.

example, if a large corporation has \$100 million to spend on auctions and a small company has \$1 million to compete at auction, the bidding credits, to create parity, would need to reflect the 100 to 1 ratio between the bidders to avoid the creation of an unfair advantage between bidders. Any lesser accommodation of the small bidder would result in an advantage for the larger operator which could not be overcome in a competition involving nothing more than available cash.

Since the above example is wholly accurate when one compares the financial resources of a small business, like CommNet Communications Network, Inc. of Dallas, Texas; and a large operator, like PageNet, Inc.; the Commission's use of bidding credits to offset the natural disincentive of small business to participate in auctions must be found to be wholly ineffective. The proposed bidding credits of a mere 10 or 15 percent are so small as to be unreasonable for the purposes stated by the Commission, namely, to provide designated entities opportunities for access to spectrum distributed by auction. The Commission's proposed bidding credits assume, unreasonably, that, given a 15 percent head-start, a small business can still keep up with a large business in the bidding, even if the large business' resources outstrip the small by a ratio of 100 to 1.

The Commission has exacerbated the problem by not proposing a cumulative bidding credit which might produce up to a 25% bidding credit for the smallest entities. Instead, the highest credit proposed is 15%. SBT respectfully submits that bidding credits of this size simply will not perform the leveling of the playing field expected by the Commission. To the contrary,

the proposed bidding credits appear to be little more than a financial placebo to demonstrate an offhand attempt to appear to satisfy its obligations to small business under the Act, while still preserving an advantage for the largest businesses which might be expected to pay the most at auction. This unspoken desire to raise revenues, despite the injury to be visited on small business, is inappropriate and should be discouraged now at the outset of this proceeding.

If the Commission intends to include realistically small business in its proposed auction, it must demonstrate that such inclusion will not be prevented or made prohibitively expensive. Nothing proposed by the Commission within its NPRM provides such needed protection of small business. Accordingly, SBT proposes, if its above exemptions for small business are not adopted following a reasoned determination that auction procedures should be employed in the first instance, that the following bidding credits be employed:

- (1) For entities with average revenues of less than \$10 million, a 10 percent bidding credit.
- (2) For entities with average revenues of less than \$5 million, a 15 percent bidding credit.
- (3) For entities with average revenues of less than \$3 million, a 30 percent bidding credit.
- (4) For entities with average revenues of less than \$1 million, a 60 percent bidding credit.
- (5) If the designated entity is also an incumbent operator, then an additional 10 percent bidding credit.

Although the recommended bidding credits above are still insufficient to produce a level playing field among competing bidders, these credits represent a far more realistic approach to including small business in the auction process than those proposed by the Commission. The barriers to entry are already great due to the dynamics of the marketplace and the wide spread incidents of spectrum warehousing by large corporations. These levels of bidding credits are necessary to offset the advantages already enjoyed by large corporations and the Commission's records within its 900 MHz auction demonstrate that much more is needed if the Commission is to avoid over-concentration of spectrum in the hands of big business.

SBT does support restrictions on assignment by entities employing alternative payment plans which would preclude assignment until such time as the full price has been paid for the spectrum, including bidding credits. Only through these restrictions can the Commission prevent its auction proceedings from being abused by sham, small companies which exist solely for the purpose of trafficking in discounted spectrum. However, SBT can discern no value to restrictions which would preclude assignment to entities which are ineligible for credits, as long as such entities agree to pay the Commission the value of such bidding credits. The Commission should avoid any action which impedes parties' ability to enter into arms length agreements where no harm is visited upon the public.

Conclusion

SBT and its members welcome this and future opportunities to express the views of small business to insure that consideration is amply provided to small business in the licensing of